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NOTES OF THE WEEK

Lord Goddard

When Lord Goddard, addressing the annual conference of the Justices' Clerks' Society two years ago, chanced to say that a man of his age, nearly 80, could not expect to hold office very much longer, the press immediately took the observation as an intimation of the intention of the Lord Chief Justice to retire shortly, and the prophets got busy appointing his successor. Within a few hours Lord Goddard disclaimed any such intention. Happily, with his faculties unimpaired he has been able to continue to add lustre to his reputation, and the legal profession, the magistracy and the general public will receive with regret the announcement that a long and honourable judicial career has ended.

Many of his judgments have been notable, and his influence on the administration of the criminal law through his work in the Court of Criminal Appeal has set standards of discrimination between offences and offenders which show that Court at its best. When to increase a sentence, when to reduce it, when to give an old offender a chance on probation, these are thorny problems, but they appear less baffling in the light of some of the decisions of the Court of Criminal Appeal.

Magistrates and clerks have reason to remember Lord Goddard with gratitude. It is inevitable that Judges should sometimes be constrained to admonish magistrates where they have failed in some respect to live up to what their office requires of them, but the occasions are rare, and, as the reports show, Lord Goddard has often taken occasion to commend a bench for its care and thoroughness in dealing with some difficult case, whether or not the decision of the magistrates was correct. Magistrates owe him gratitude also for his readiness to travel long distances and give up much leisure in order to address meetings, giving them guidance and encouragement.

We join his many well-wishers in

hoping that Lord Goddard may in his retirement enjoy many years of health and happiness.

Saturday Sittings

In the metropolitan magistrates' courts sittings are held, by statute on every weekday, Saturday being no exception. Elsewhere, practice varies, and undoubtedly there are many courts where a Saturday sitting is quite exceptional. Whether a court should or should not sit regularly on Saturday must depend principally on the volume of work. Doubtless many magistrates and most officials and others having business at the court prefer to have Saturday free of court work, so that they may devote the whole, or at least half of the day to other work or to recreation. If, however, business becomes congested and delays ensue, Saturday sittings may become a necessity. A whole Saturday devoted to a long case may be a great convenience to parties and witnesses as an alternative to a number of short hearings and adjournments, and members of the legal profession will not be unwilling to give up some leisure in the interests of general convenience. It remains true, however, that Saturday sittings are not generally popular.

The Case Against Saturday Sittings

This month's issue of the *Law Society's Gazette* contains an article by Mr. E. Ronald Horsman, clerk to the Scarborough borough justices, in which he examines the question of Saturday courts from the point of view of the various people who may be affected, and asks whether the time has not come when they should be abolished.

In former days when magistrates and many others came into a market town on Saturday because it was market day, and when transport facilities were better on Saturday than on other days, it was no doubt convenient to hold magistrates' courts on that day, but Mr. Horsman submits that this no longer holds good, and he thinks that the five

day week should be recognized as far as possible.

He goes on to say, and no doubt he represents the views of most members of the legal profession, that solicitors like to be free on Saturday morning for interviews with clients, many of whom can attend at their offices only on Saturdays, and that they are anxious not to be deprived of a weekly half holiday by appearing in court on a case which may go on all day. So, too, the staff of the clerks to justices would like to have the office closed at midday. The collecting office must be open on Saturday morning because it may be the busiest time for receiving payments, but it is suggested that the business can be finished in the morning. Police are often needed for special meetings and functions on Saturday afternoons and, in Mr. Horsman's opinion, prefer to be free from attendance at court on that day, while members of the public often protest at being required to attend.

Mr. Horsman recognizes that it is always a matter for the magistrates to decide, but he feels confident that they will always be ready to consider representations which he believes would be generally in the interests of the public. For our part, we should be interested to hear about the experiences and the views of our readers.

False Alarms of Fire

One can only guess at the motives of those who indulge in the mischievous practice of calling out a fire brigade to a non-existent fire. Perhaps they like to witness the turnout and arrival of the fire engines, or perhaps they think such a hoax is a good joke, but like most practical jokes it is a poor kind of joke. It may even have tragic consequences for, as has often been said, the fire brigade may not be available where it is really needed because it is away on a fool's errand.

The law regards it as a serious offence, the penalty being a fine not exceeding £25 or imprisonment for a term not exceeding three months or both such fine and such imprisonment.

That the consequences of such an offence can be tragic appears from a recent incident at Bromley. A child aged 19 months and a man who is believed to have tried to rescue him died in a house to which the fire brigade had been called while the brigade was away held up by a false alarm in another street. A unit from another area arrived, but apparently not quite so

soon as the local one might have done and, said an officer, some time must have been lost and it could have made a lot of difference.

Litter Act, 1958

The Act came into force on August 7, so it will no longer be necessary to resort to proceedings under byelaws. Anyone may prosecute, but it seems to be thought that local authorities will usually do this.

The new Act is of wide application, making an offence the unauthorized leaving of litter when it is thrown down, dropped or otherwise deposited in, into, or from any place in the open air to which the public are entitled or permitted to have access without payment. The penalty is a fine not exceeding ten pounds.

It may well be, as was suggested in a broadcast conversation, that much can be done, by the police and others, by warning offenders and calling attention to the provisions of the new Act, so as to make people realise the mischief aimed at and the penalties that may follow if warnings are disregarded. The provision of suitable receptacles for litter is another means of reducing the nuisance.

Powers of Juvenile Courts

The County Councils Association have made some interesting suggestions in evidence submitted to the Departmental Committee on Children and Young Persons. Some of these are in line with those made by other organizations.

On juvenile court procedure it is mentioned that it sometimes happens that the evidence leading to the conviction of the adult is taken again so that the court may be fully informed of the part which the child or young person played. The association believe that a repetition of the earlier evidence should be avoided as being detrimental to the child or young person. It is suggested that a certificate of conviction should be accepted as a matter of practice in suitable cases as the only direct evidence of the earlier offence and that a decision should be reached on the strength of reports from the local authority and the probation officer on the child's home circumstances together with the knowledge that the adult court considered that an order under s. 62 might be needed.

On the age of criminal responsibility it is recommended that the age when it should be conclusively presumed

that a child cannot be guilty of an offence should be raised from under eight years to below the upper limit of the compulsory school age.

As pointed out in the memorandum of evidence submitted by the association the trend of thought in recent years on the deterrent, reformatory and punitive aspects of the treatment of offenders has become more liberal. The child below the upper limit of the compulsory school age who is charged with an offence usually receives sympathetic treatment but if the court merely imposes a fine and requires a parent to pay it the child may lose his respect for the criminal law. It is suggested, therefore, that such a child should be dealt with outside the general criminal code and, better still, should be reprimanded or otherwise dealt with by his parents or the police away from the court.

The association hope, also, that it will be recognized that it is not desirable for the law to be so rigorously enforced that a child or young person would inevitably come before the court for what are now minor statutory offences, e.g., riding a bicycle without a light. It is suggested that a warning by the police should suffice unless the act is repeated.

It is further suggested that so that courts may have full information a record of orders made by juvenile courts should be kept by the police and proved in the same way as a criminal record is now proved. Information about the child's general circumstances would be made available through the children's officer or the probation officer, as at present.

Application by Implication

Highly technical points of procedure do not prevail today as much as they did formerly, though of course it is quite proper for counsel to submit them in the interests of their clients. The Divisional Court decided a question of procedure which it was certainly right to take, though it did not succeed, in *ex parte Rigby* [1958] 3 All E.R. 30.

Before a magistrates' court a case coming within the provisions of s. 18 of the Magistrates' Courts Act, 1952 was dealt with as a summary offence throughout without there having been any formal application under subs. (1) for summary trial. The defendant pleaded guilty and counsel addressed the court in mitigation. The defendant was convicted. Before the Divisional

Court the application was for leave to apply for *certiorari* to quash the conviction because the magistrates' court had adopted summary trial without application having been made by the prosecution under s. 18 (1).

The Court dismissed the application,

following the decision in *James v. Bowkett* (1952) 116 J.P. 445; [1952] 2 All E.R. 320. Though there was no formal application that summary procedure should be adopted such an application was implied by the conduct of the prosecutor.

It may be well, however, to remember what was said in *James v. Bowkett* to the effect that in such circumstances the clerk should ask the prosecutor if he is applying for the case to be treated as a summary offence. If that is done no point can arise subsequently.

OFFICE METHODS

By F. G. HAILS, Solicitor, Clerk to the Dartford Justices

For some months I have had in mind an article on methods whereby the ever increasing work in the office of a justices' clerk may be carried out without either the expense of an increase in staff, or an intolerable burden on the assistants who have to wait months whilst the magistrates' courts committee meet to decide on a request for extra help, and further weeks whilst the local authority consider what its view is, and the Home Office gives its final approval: then, of course, there is a further delay until the approved vacancy is filled. I had driven myself out of my native lethargy to assemble my ideas, and then like a bombshell, came the Note of the Week at 122 J.P.N. 426: the paper is to be improved by "omitting from it all matter of passing interest." Are my ideas of passing interest, and so to be discarded in favour of the elegancies of A.L.P., or are they likely to be of use to future generations of magistrates' clerks and local government officials? I do not know, but encouraged by the fact that a committee of the Justices' Clerks' Society is investigating the very problem I propose to discuss I am encouraged to try my luck with the new policy of that legal journal which has for so many years published matters of interest to that branch of the profession which works in the magistrates' courts.

In considering office methods in clerks' offices one is faced at the start with the difficulty that there is no standard of what must be done: of course the registers must be kept, the courts must meet and run, the fees and fines be duly recorded, collected, banked and paid over. Periodical payments must be collected and disbursed, the juvenile court panel must meet twice a year, the probation case committee as required, and the justices annually, whilst there have to be two sessions of the general annual licensing meeting, eight transfer sessions, and so on. Perhaps the licensing committee will want to inspect a public house now and again, but the frequency with which it does so, like the frequency with which the probation case committee meets, will depend to some extent on the energy of the magistrates and their clerk, and so there is no yardstick by which to measure the amount of work entailed in the efficient running of a court office. Some clerks spend a great deal of time and thought on preparation of reports and statistics for their justices, others do not. The result of all these variations is that there is undoubtedly a tendency for magistrates' courts committees, under the guidance of a clerk and a financial advisor with the interests of a local authority in mind, to regard the energetic clerk as a thorn in the flesh, and the indolent one, with his small bills and minimum of staff, as the *beau ideal*: of course, these remarks apply mainly to county divisions, but even in those happy courts where the magistrates' clerk is clerk to the committee objection by the local authority to increased expenditure is not unknown, so it behoves each clerk, not to cut his coat according to his cloth, but to make the most

of the meagre length at his disposal, bearing in mind that his greatest cost is likely to be in staff wages, and that if he can persuade those who decide such matters that he can avoid extra salaries he stands a greater chance of getting any extra equipment he asks for and even of getting his allowance for such expenses as stationery increased.

Perhaps the first matter to be considered in the office of a justices' clerk is the amount of time taken by manuscript work as opposed to mechanical reproduction. It is now possible to obtain loose leaf registers for every phase of magisterial work, and the loose leaf minute book is common commercial practice. It is doubtful whether, at the start of a day's work, a typist is quicker than a manuscript writer; an expert typist probably always has the edge and there is little doubt that as the hours wear on the legibility and speed of handwriting suffer against those of typing, and for this reason alone typing has my vote. I know that many clerks are opposed to the use of loose leaf registers because it is easier to tamper with them, but to my mind no system is proof against deliberate villainy, and I prefer to trust my staff. Another advantage of the typewritten register is that the left hand side of the fees and fines book may be made as a carbon copy of the left hand side of the register, and this in itself is a very considerable saver of time.

But typing is not the only means of reproducing documents, or of originating them and carbon paper itself may be soon a thing of the past. There is the stencil, used I believe in one court for taking depositions, so that unlimited copies may be made without the tedious task of copying and examining, there is that kind of chemically treated paper which will make copies without the use of carbon, and last of all there is the photographic printer. I am glad to say notwithstanding my strictures on some magistrates' courts committees, that that one which serves West Kent has seen fit to authorize the provision of a photographic reproducing device for use in my office. For this I can find many uses, the most obvious being the copying of process, orders and exhibits.

In spite of the enlightened attitude of the local magistrates' courts committee I have not been able to mechanize the periodical payments system of accounting, and for that matter I doubt if there is a single magistrates' clerk in the country who has been able to do so. Yet no commercial firm would try to carry out the meticulous recording of small weekly payments by other than mechanical means. Perhaps some day someone will be able to make the experiment. I should like to try a mechanical addressing machine, not only for envelopes, but for inserting names and addresses in justices' licences and similar documents: this last has been done at Coventry city, but there the clerk had to borrow a machine from the city treasurer. Nowadays hand operated addressing machines can be obtained for a very few pounds, so perhaps:

there is hope. West Kent, as I have said, has a progressive magistrates' courts committee, so I have been able to do away with the postage book in favour of an automatic letter franker. That postage book was a nightmare, for every auditor always insists that every postage book shall balance, whereas everyone of common sense knows that if it does either the junior who keeps it is a phenomenon of accuracy, or an unscrupulous fiddler.

The next matter is that of forms: it is a tradition in magistrates' clerks' offices to use those compendious forms, prepared by a well-known firm of stationers, which contain a number of variations, those not required being crossed out. I have never timed this process, but it seems to me not improbable that a skilled assistant could type in what is required, just as quickly as he could cross out that which is not. I may be entirely wrong in this assumption, and undoubtedly using this well-known type of form does save keeping a large number of special forms, and also, I would emphasize, a higher degree of skill is needed to draw a part of a form each time it is needed. Nevertheless, for certain purposes I have discarded these forms for others less elaborate, leaving the completion to be done by the aid of the Magistrates' Courts (Forms) Rules, 1952. Again, I have modified certain of these forms, relying on the provisions of r. 1 (i), which says that the forms contained in the schedule "or forms to the like effect may be used . . ." For instance Form 4, Commitment on Remand, contains the words: "You the said constables, are hereby commanded to convey the

defendant to the said prison and there deliver him/her to the Governor thereof . . ." and so on, the variation "him/her" or "he/she" occurring elsewhere on the face of the form and in the endorsement where bail is allowed. In this form, and all similar ones which I have printed or stencilled I have used the words "defendant" instead of "him/her." This may not sound a great alteration or saving on any one form, but over the year in a busy court, on every form, it is not so inconsiderable as it may seem. It is also possible to alter some forms so that two forms of differing purpose may be typed as copies, one instance which I have found particularly useful being the complaint and summons in matrimonial cases, and another being a careful arrangement whereby a notice of fine, the instalment register sheet (again a loose leaf) and a supervision of fine order if needed, can be typed in one process, and similar treatment has been given to the form of recognizance and notice thereof. No doubt other clerks have tried similar schemes, and if my own efforts can be of any assistance to others they are freely offered, just as I hope that anything which I have not covered may be brought to my attention by ingenious brother clerks.

The trouble is, of course, that so far there has been neither encouragement nor chance for clerks to exchange ideas. The Justices' Clerks' Society has now taken the initiative for an exchange of ideas and as a body clerks can but hope that its deliberations may be considered seriously by magistrates' courts committees when finally the conclusions reached are published.

THE HEARTH TAX, 1662-1689

By ERNEST W. PETTIFER, M.A.

The happy return of the Merry Monarch, third in the Stuart line of kings, may not have been quite such a joyful event as the historians would have us believe. All the Stuarts suffered from the possession of extremely expensive tastes, and a permanent and chronic shortage of means wherewith to gratify those tastes. It must have been a disconcerting start for the second Charles to find, on entering the metropolis to take up his crown, that there was only £141 7s. 11d. in available cash, and that the national debt amounted to £2,500,000. That the Army and the Navy were impatiently awaiting their arrears of pay would be another depressing fact which the newly-returned sovereign could not ignore.

The austerities of the Cromwellian period had ended in anarchy and bankruptcy. Commons and people were, in the main, favourable to the return of the new ruler, who, at 30 years of age, able and good-looking, enjoyed a considerable popularity. On September 4, 1660, the Commons resolved that the King's revenue should be fixed at £1,200,000 a year. On paper this looked very reassuring, but the main problem still remained—how was the money to be raised? The first nine months showed a deficit of 25 per cent. on the ordinary revenue, and it was clear that new methods would have to be adopted if the amount voted was to be raised.

At this point we first hear of the Hearth Tax, and its possibilities, but it is not until March 1, 1662, that a Bill for "laying an imposition upon Chimney Hearths" was brought in and received its first reading. There seems to be no reliable information available as to who was the instigator of this original method of raising the wind, but none of the Stuarts were ever at a loss in this respect, and the idea may have been the King's.

Although there was considerable opposition in the Commons from those who felt it was dangerous to the liberty of the subject the Bill was pushed through at speed. It received a third reading on March 12; it went through the Lords with equal speed and received final approval there on March 19. Despite this rapid progress, the King and his advisers may have felt that there were risks to be faced in the country, but, whether this was the reason or not, the Royal Assent was not given until May 19, 1662.

The new Act imposed an annual duty of 2s. upon "every Fire Hearth and Stove," to be levied half-yearly at Michaelmas and Lady Day, the first instalment being payable at Michaelmas, 1662. The Act, subsequently amended in certain respects, remained in force throughout the reign of Charles II and into the reign of William and Mary, and came to an end only in 1689. It may be that the first attempt to collect the tax came in late September, when the evenings were becoming colder, and Englishmen were beginning to think of the warmth and comfort of their own firesides, but, whatever the reasons, it is beyond dispute that from the first the new tax was met with angry and determined opposition from people of all classes.

It is rather singular that, although the Act survived for 27 years, and almost led to insurrection at times, the history books give very little attention to the Hearth Tax, or to the controversies associated with it. Happily we can always look to the immortal Samuel Pepys, Esq., F.R.S., for reliable information as to his own period. On June 30, 1662, he noted in his Diary these brief but significant comments, "This I take to be as bad a juncture as ever I observed. The King and his new Queen minding their own pleasures at Hampton

Court. All people discontented... Much clamour against the chimney money; and the people say that they will not pay it without force."

Three years later he wrote, very briefly but positively, "The Chimney-money comes almost to nothing." From Pepys' terse comments it can be assumed that he was not a supporter of the new tax, and, be it remembered, Pepys had had a vast experience in the difficult task of raising funds for his beloved Navy.

But the real purpose of these references to the history of the much-hated Hearth Tax is to introduce to the reader a new and impressive volume* now published under the direction of the Records and Museum Committee of the Warwickshire county council, a committee which has already made a striking contribution to county history by its publication of several handsome volumes upon the work of the Warwickshire justices sitting in quarter sessions in the seventeenth century. Now the committee has turned its attention to what is, obviously, a very large accumulation of documents dealing with taxation in the county during the same century. How vast the store of documents at the Shire Hall must be is shown by the fact that this imposing volume, with nearly 100 pages of introduction, and well over 300 pages of tabulated records, covers only the northern area of the county around Atherstone, Nuneaton and Tamworth.

The task undertaken by Mrs. Margaret Walker, M.A., the editor, must have been an arduous one, not only by reason of the number of documents to be examined, but also owing to the age of the documents, and the almost illegible character of the handwriting. The photographic reproductions of several assessments show conclusively the extremely difficult task facing the editor, a task, however, which has been most successfully surmounted. The results of the editorial examination, of, probably, some thousands of papers, are neatly arranged under parishes, giving in each case a brief history of the parish, particulars of the incumbents, details as to population, and then notes upon individuals, many of these

* *Warwick County Records, Hearth Tax Returns*, Vol. 1, published under the direction of the Records and Museum Committee of the Warwickshire county council, 1958. (Shire Hall, Warwick.) Price £2 2s.

notes being of personal and human interest. The whole of this section of the book forms a county record of permanent value.

Mr. Philip Styles' introduction is not only a careful and well-annotated survey of the historical progress of the Hearth Tax throughout its Warwickshire history; the picture he presents covers all the counties. The difficulties of collecting the new tax were apparent from the outset, and Mr. Styles has traced the various systems—sheriffs, justices and local officers; receivers under government control; then the farmers or financiers who tendered to collect the tax for a fixed sum. Then the reversal of the order and, finally, commissioners. The initial attempt to bring in the local figures—the sheriffs, justices, constables and clerks of the peace, at first by simple command, and later by the threat of heavy penalties, is well brought out. The attempt to create a local administration met with scant success, although the initial task—that of preparing the first assessments and lists of ratepayers—must have been accepted, albeit grimly and without enthusiasm. This is proved by the large numbers of these documents still existing in Warwickshire. Throughout the 27 years' history of the tax there was, too, the equally long controversy as to whether the forges of the smiths, and the ovens of the bakers were liable to be taxed. The ordinary folk tore up their hearths and pulled down their chimneys, so determined were they not to pay. Arrears of tax were classified as "hopeful" or "desperate"! There is much information as to the men who figured at different times as local collectors, and their difficulties. Some local constables decamped, taking with them monies collected. Some of the farmers came to grief too, for, their tenders accepted, they soon found themselves faced with demands from His Majesty for loans secured somewhat insecurely upon the prospective collections!

Mr. Styles has arranged and told his story with clarity and literary skill and the foreword which precedes the introduction is a model for all foreword-writers. But, of course, The Right Hon. The Lord Evershed, P.C., F.S.A., Master of the Rolls, who has contributed it, brings to bear upon the old Act of 1662, and its attendant documents, a vast experience. "The volume now published," he says, "will be acclaimed by all students of our history."

A PRACTICAL POINT ON THE RENT ACT, 1957

[CONTRIBUTED]

Like its predecessors the Rent Act, 1957, presents difficult problems of construction, which no doubt will in due course be resolved by decisions of the courts.

One point in particular with which we would like to deal—and it is a point on which opinion is divided—is about the effect of antedating a lease which is intended by the landlord to effect the decontrol of the dwelling-house. Tenancies of houses which were decontrolled on July 6, 1957, still remain controlled, during the stand-still period, which (as things are at present) is due to expire on October 6, 1958. It is, however, open to the landlord to effect their decontrol by the grant of a tenancy of at least three years' duration. For this purpose para. 4 of sch. 4 to the Act requires the landlord and tenant to "agree for the creation of a tenancy of the premises," which tenancy must be one "not expiring or terminable by notice to quit given by the landlord, earlier than three years from the commencement thereof."

Now the ordinary rule is that a tenancy "commences" not

earlier than the date of execution of the lease or tenancy agreement creating it, and that antedating the lease or tenancy agreement is ineffective for the purpose of accelerating the date of commencement. An antedated lease for a term of three years, commencing from a date prior to the date of its execution, cannot *prima facie* satisfy the requirements of para. 4 above, for the tenancy would of necessity be one for a less period than three years.

But if the period of the term is for at least three years, when calculated from the date on which the lease or tenancy agreement is executed, antedating that document cannot alter the position, and the tenancy would satisfy the requirements of para. 4.

There is, however, another case which has to be considered. The parties may agree to the granting of a tenancy for a term of three years to commence from a future date, but may allow some time to elapse before the formal document

(whether lease or tenancy agreement) is executed. In such a case it is not unusual to antedate the lease to the agreed date for the commencement of the tenancy. In such circumstances, if the lease is for three years from the agreed date, the fact that that date has had to be antedated because of delay in the execution of the formal document would not

prevent para. 4 from operating, and conferring the full benefit of decontrol on the new tenancy.

The remarks made recently by the Minister of Housing and Local Government, about the effect of antedating, must therefore, it seems, be read subject to the qualifications above mentioned.

TRAVELLING AND SUBSISTENCE ALLOWANCES

Acute dissatisfaction continues to be felt and expressed about the scales which govern the alleged reimbursement of expenses incurred by members of local authorities in the execution of their public duties. The scales were last revised in 1954 and questions are frequently asked in Parliament about Governmental intentions as to their revision: the replies have promised nothing. The local authority associations, on strong representations from various of their constituent members, have also pressed for action by the Minister of Housing and Local Government, but so far with complete lack of success.

There is no indication that the greater freedom which local authorities have been promised will include the right to fix their own scales of reimbursement although it is logical, if the promise of freedom means anything, that they should be allowed to deal with this comparatively trivial item of expenditure at their discretion. If it is feared that individual authorities are not to be trusted to act in an economical and sensible manner it should at least be accepted that no objection would be raised to scales devised by the local authority associations and accepted by their members.

When the principle of extended allowances was enacted in the Local Government Act of 1948 the Government of the day, or its advisors, may well have thought it necessary to keep a grandmotherly eye on the new scheme and to decide in detail what should be allowed. At the same time it was made clear that these allowances would not rank for any specific grant, and that the only Government assistance would be through the exchequer equalization grant. For all authorities not in receipt of this latter grant all payments would have to be met entirely from the rates. It was further prescribed that a full record of amounts paid for travelling and subsistence must be kept and be open to public inspection. We gather the impression that the extended principle of reimbursement of expenses was distasteful to Whitehall, which thought up as many controls and deterrents to expenditure as possible.

But 10 years have passed and we suggest it is time for grandmama to accept what she put her name to in the Memorandum of Guidance to the Local Government Manpower Committee and of which she is reminded every month by the *County Councils Gazette*, namely, "To recognize that the local authorities are responsible bodies competent to discharge their own functions and that . . . they exercise their responsibilities in their own right, not ordinarily as agents of Government Departments . . ."

The present situation would not be quite so bad and anomalous if there were in fact one grandmother only. In the public authority field, however, there are several of these creatures none of whom has embodied in regulations views which agree with any of its relations. We quote one example. Local authority members required by business in London or when attending certain annual conferences to be absent from home overnight are entitled to receive £2 10s.:

in the case of any other absence overnight the sum allowed is £2 2s. A member of a regional hospital board or of a hospital management committee required to be absent similarly is allowed £2 8s. 6d. whatever be the purpose of his authorized journey and whether it be to London or elsewhere. A member of a probation committee or a justice of the peace is in similar circumstances allowed only £1 17s. 6d. for a journey to London and £1 10s. elsewhere. The governing regulations were devised in the departments of the Minister of Housing and Local Government, the Minister of Health and the Secretary of State respectively: it is charitable to suppose that not one of the devisors knew what was being devised elsewhere, either in Whitehall or by various negotiating bodies.

The whole concept of these regulations is a curious example of concentration upon the unimportant, an occupational disease of some branches of the civil service. Failure to co-ordinate departmental action on similar subjects is an even more widespread malady on which we have commented many times previously in these columns: some improvements have been made but much of anarchy remains in that field. Our concern at this time, however, is not so much with the absence of departmental co-ordination in the making of regulations but rather with the question of need for any regulations at all on this small financial matter. Even if the departments continue to refuse recognition of the principle of local authority responsibility which they themselves have enunciated and still argue that control is necessary it is patent that the prescription of a scale of allowances does not in fact ensure in any significant way effective control of the total of money spent. Whitehall has not so far attempted to prescribe the size of local authority committees, the number to be appointed or the frequency of meetings, nor is it likely to do so. Failing such prescription the aggregate totals paid to all members and the totals paid to individual members will continue to vary quite considerably as between similar authorities because of different methods of conducting their business. By comparison the possible additional cost of a new scale, which could only be marginal, is trifling.

An additional and important reason for abolishing control by regulation is that there is no such control over the expenses incurred by most officers. It is true that scales of considerable meanness are laid down by civil defence circulars for part-time instructors, enrolled members of civil defence corps and auxiliary firemen but these are an exception. The Police Regulations also prescribe subsistence allowances varying according to rank and time spent but are not of serious import in view of the power of the chief constable to grant either greater or lesser amounts than those laid down if satisfied that there is cause to do so. Most officers receive allowances determined after negotiation by national joint councils of various kinds: the differences between the views of those who have negotiated these allowances and the civil servants who devised the regulations affecting members have

caused constant friction and protest. For example, a number of local authorities have drawn attention to the difference between the figures attributable to members and to officers covered by the National Joint Council for administrative, professional and technical staffs. If an officer and his chairman are out from, say, 11.30 a.m. to 6 p.m. the officer is entitled to 10s. 6d. but the chairman can claim only 7s. 6d. For an absence overnight in the provinces the officer receives £2 10s. but the chairman only £2 2s. An increasing number of authorities have decided that £2 10s. is inadequate to cover officers' expenses during 24 hours' absence in London and have increased this sum by varying amounts: no such latitude is permissible for members.

Unnecessary anomalies of the sort quoted could easily be eliminated if, as we have suggested, the power to fix scales for members were left to the local authorities, acting through

their associations. Co-ordination with officers' scales would then be relatively simple and co-operation between the concerned national joint councils could ensure the removal of existing anomalies among the officers. If the familiar plea and objection is advanced that nothing can be done because legislation to amend s. 113 of the Local Government Act, 1948, would be necessary, we merely observe that where departments are prodded hard enough they can produce draft legislation for the consideration of Parliament quickly enough, as was done, for example, in the case of police pay retrospection. This was effected by the Police, Fire and Probation Officers Remuneration Bill, which had its first reading in the House of Commons on November 8, 1956, went through all its various stages and received the Royal Assent on November 28, less than three weeks after first being introduced.

THE SICK AND THE AGED FOR 10 YEARS

By JOHN MOSS, C.B.E.

(Concluded from p. 536, ante.)

THE NATIONAL ASSISTANCE SCHEME

The National Assistance Act, 1948, has been described as the final step in the abolition of the Poor Law. The responsibility for domiciliary financial help to the aged and others in need was transferred from the local authorities acting through their public assistance committees to the National Assistance Board in so far as this transfer had not been made by previous legislation.

Some fears were expressed that the transfer of this intimate personal service from a local to a national body would be detrimental to those seeking assistance. Enough tribute has not been paid to the work of the relieving officers under the old system—they had come to be known as the friends of the poor but they were working under a system which had become obsolete. It can now be recorded that there has been no loss in this human approach by the officers concerned—although they are officers of a national body. Those who require additional financial help to supplement national insurance benefit or those who are not entitled to such benefit, have received the utmost consideration from the officers of the board. Further, the Minister of Pensions and National Insurance, acting on the advice of the board, has taken care to ensure that as the cost of living has increased rates of assistance have been increased and in fact sometimes at a greater rate than represented by the increase in the cost of living.

The transfer of the responsibility for financial assistance to the board has, throughout the country, been of advantage to those in need. There was some fear that uniformity of scales might be detrimental but the board has so wisely exercised its discretion to match assistance to need that there is the advantage of a reasonable minimum rate of assistance, as against the varying rates of the public assistance authorities, coupled with the full discretion of their officers to meet special needs.

Residential Care

Part III of the National Assistance Act deals with the functions of local authorities especially in providing residential accommodation for the aged and for others who require care and attention not otherwise available to them.

The Ministry of Health had already drawn the attention of public assistance authorities to the need to provide small

homes for old people to replace the workhouse. In this, much pioneering work had been done by religious and voluntary organizations. Some public assistance authorities had also begun to make provision of this kind. At the time of the introduction of the Bill only about five per cent. of the elderly were in institutions and it is believed that about 97 per cent. of them are now living in their own homes or with relatives. This is partly due to the increased housing provision made by the local authorities but still more important to the excellent domiciliary services provided by the local health authorities and to the help given by voluntary organizations.

It was contemplated that the new homes for the aged, up to the present mainly in adapted houses, would accommodate from 25 to 35 persons. There has recently been a tendency to increase the size of these homes but the important consideration which must always be borne in mind is that they should be "real homes." There is no doubt, however, that the provision which has been made generally for the residential care of old people has afforded much happiness to those concerned.

Even although many old people—too many—are still accommodated in former institutions these have been much improved internally and in the way of furnishing, etc., but if, as seems very probable, they will be required for this purpose for some years to come, more improvements should be effected especially by making much smaller—and preferably cubicalising—some of the large bedrooms, generally making more opportunity for privacy and by making smaller sitting rooms. Much has been done in providing amenities such as television—often by voluntary gifts. An important feature of the new system is that each resident, without other resources, has a minimum allowance for pocket money—now 10s. a week. Under the old poor law this was impossible and it was not until 1938 that an Act was passed, resulting from a private member's Bill allowing public assistance authorities—but not requiring them—to give pocket money at the rate of 2s. a week to any person aged 65 or upwards in a poor law institution.

The shortage of accommodation in homes provided by local authorities under the National Assistance Act is much more serious than the hospital position. In some areas the waiting list includes hundreds of persons who have been agreed as suitable for admission when accommodation is available.

The division of responsibility between the hospital authorities and the local authorities for the care of the aged has caused difficulties and it has sometimes been suggested that it would have been better for the hospital authorities to be responsible for old people's homes. There is no reason to believe that the elderly would have been treated any better if this had been arranged and they might even have been worse off as there might have been a tendency to deal with the homes also as a kind of hospital. There have also been suggestions that it would be better if the chronic sick hospitals were run by the local authorities. This would probably be detrimental to the old people themselves. There might well be a tendency for those hospitals to be considered as something like the old poor law infirmary. Broadly the aged sick—and the non-sick—have benefited enormously from the new arrangements and there is no justification for any drastic alteration of the system. What is needed is a closer co-operation between all those concerned.

Voluntary Services

An account of the development of the services for the sick and the aged in the last 10 years would not be complete without some reference to the part taken by voluntary organizations and voluntary help generally in this matter. It was felt in some quarters that with the coming into operation of the new schemes voluntary effort would no longer be needed except in so far as voluntary service is given by members of the new bodies as of the local authorities.

The Minister of Health (Mr. Derek Walker-Smith, Q.C.) in a message referring to the tenth anniversary of the National Health Service said it was a remarkable and encouraging feature that the provision of comprehensive health services out of public funds has not resulted in any falling off in voluntary work but rather a renewal and resurgence of it in new and varied forms. It can now be safely said that there is even greater need for voluntary help than ever before. But the form taken by much of the voluntary work is different. Although large sums of money are still raised by voluntary effort for all kinds of causes—and it is agreed that even for the hospital service voluntary money is still helpful to provide various kinds of amenities—broadly under our present health and welfare services most of the cost must come from public funds. But voluntary service, using that expression in its true sense can do much.

In the hospitals, great work is being done by the members of the league of hospital friends while other organizations

such as the B.R.C.S. and the W.V.S. are helping in many different ways. Voluntary organizations have been pioneers in many forms of social effort. They provided old people's homes and although they are still doing so, it is realized that this must be mainly the task of the local authorities. Pioneering work for the elderly mental patients is being done by the National Association of Mental Health.

Much more is, however, being done by voluntary workers of all kinds for those who are living in the community. Voluntary visiting supplements the great work being done by domestic helps and home nurses employed by the local health authorities; others visit the lonely in hospitals and in old people's homes.

In quite a different field voluntary help is meeting a need and doing pioneer work in the establishment of chiropody clinics—largely financed by voluntary money but sometimes supplemented by grants from the local authority. A great deal of distress is caused to elderly people through foot trouble. It is to be hoped that before long it will be accepted that this service should be financed under the National Health Service. It is the one extension of that service which is generally agreed to be necessary.

In old people's welfare all kinds of voluntary service is being given by the organizations and individuals associated with local old people's welfare committees. In the last 10 years the number of these committees has increased from just under 400 to nearly 1,400. One of the most important services for the elderly is the provision of old people's clubs. In this matter very large sums have been raised by local voluntary effort and help has also been given by the local authorities. The National Corporation for the Care of Old People and latterly the King George VI Memorial Foundation have helped by making capital grants towards the erection and extension of clubs. Through the combating of loneliness in these clubs and in other ways the elderly are being helped to live happily in their own homes. A recent development of the club idea is the provision of day centres for those who can only leave their homes when they are transported. This is being organized by voluntary effort and in one case the cost of running the club is being borne by the local authorities of two neighbouring boroughs.

It is now generally accepted that partnership between voluntary organizations and statutory bodies is an essential feature of our health and welfare services as in other fields of social work.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Donovan and Ashworth, JJ.)

R. v. McCARTAN

July 28, 1958

Criminal Law—Sentence—Irish offenders—Desire of court to return offender to Ireland—Probation order not applicable—Common law binding over appropriate course—Criminal Justice Act, 1948 (11 and 12 Geo. 6, c. 58), s. 3.

REFERENCE by the Secretary of State under s. 19 of the Criminal Appeal Act, 1907, and s. 38 (6) of the Criminal Justice Act, 1948.

The appellant, Stephen McCartan, was convicted at Assizes and placed on probation for three years, and a condition was incorporated in the probation order that he should return to Northern Ireland and stay there. He came back to England within the probation period, and was convicted at a magistrates' court of

being drunk and disorderly. He was then brought back to Assizes in respect of the breach of probation and was sentenced to 12 months' imprisonment for the original offence.

Held, that if a court desires, in the case of a citizen of the Irish Republic or of Northern Ireland, instead of passing sentence, to send the offender back to Ireland and to ensure that he remains there, a probation order is not available, because the offender could not be placed under the supervision of a probation officer, nor would there be a petty sessional division in England which could deal with him if he broke the probation order; but the proper and appropriate course is to bind the offender over under a common law recognizance with a condition that he returns to Ireland immediately and does not return to England for a specified period.

No counsel appeared.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Devlin, Donovan and Ashworth, JJ.)

R. v. CHAPMAN.

July 21, 28, 1958

Criminal Law—Sexual offence—Abduction of unmarried girl under 18—Intention that she should have “unlawful sexual intercourse”—Meaning of “unlawful”—Sexual Offences Act, 1956 (4 and 5 Eliz. 2, c. 69), s. 19.

APPEAL against conviction.

The appellant was convicted at Hampshire Assizes before Stable, J., on the abduction of an unmarried girl under the age of 18, contrary to s. 19 (1) of the Sexual Offences Act, 1956, and was sentenced to 18 months' imprisonment. The sub-section provides: "It is an offence . . . for a person to take an unmarried girl under the age of 18 out of the possession of her parent or guardian against his will, if she is so taken with the intention that she shall have unlawful sexual intercourse with men or with a particular man." The appellant, a married man, took an unmarried girl aged 16 and a few months from her parents' home at Southampton to Basingstoke. He had sexual intercourse with her there and subsequently at Winchester, whence she was brought home by the police.

Held: that, "unlawful sexual intercourse" in s. 19 (1) meant any illicit intercourse, i.e., any intercourse outside the bond of marriage, and not intercourse which, *per se*, was a criminal offence: e.g., with a girl under 16, and, therefore, the conviction was right and the appeal should be dismissed.

Counsel: I. A. Kennedy, for the appellant; Inskip, for the Crown.

Solicitors: Registrar, Court of Criminal Appeal; A. Norman Schofield, Town Clerk, Southampton.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Slade and Devlin, JJ.)

NATIONAL COAL BOARD v. GAMBLE

July 25, 1958

Criminal Law—Aiding and abetting—Ingredients of offence—Driving of vehicle with excess load—Vehicle weighed by defendants' servant and found to be carrying excess load—Weight ticket then handed to driver by defendants' servant—Time of passing of property in load—Mens rea—Motor Vehicles (Construction and Use) Regulations 1955 (S.I. 1955, No. 482) regs. 68, 104.

CASE STATED by Derbyshire justices.

An information was preferred at a magistrates' court by the respondent Gamble, a police officer, charging the appellants, the National Coal Board, with aiding and abetting the driving by one Mallender of a heavy six-wheeled motor lorry, the weight of which with its load exceeded 20 tons, contrary to regs. 88 and 104 of the Motor Vehicles (Construction and Use) Regulations, 1955.

On October 3, 1957, Mallender, the servant of a firm of hauliers named H. Wilson and Sons (Mosboro), Ltd., came to the appellants' colliery to load coal and take it to the Central Electricity Board, with whom the appellants had a running contract. Mallender took his empty lorry to a hopper operated by the appellants' servant and coal was discharged thereby into the lorry until Mallender gave the order to stop. Mallender then took the lorry to the weighbridge, at the office of which a notice was displayed warning owners and drivers of vehicles that the Board were not responsible for the use of any vehicle on a road which was loaded beyond its authorized capacity. The weighbridge operator, one Haslam, weighed the lorry and its load and informed Mallender that the excess weight was 3 tons, 18 cwt. He asked Mallender whether he intended taking the load. Mallender said that he would risk it, and Haslam then made out the weight ticket required by s. 21 of the Weights and Measures Act, 1889, and handed it to Mallender, who then drove off. The lorry was stopped by the police on the road, and as a result H. Wilson and Sons (Mosboro), Ltd., were convicted and fined.

No evidence was called by the appellants at the hearing. The justices were of opinion that the handing over of the weight ticket by Haslam constituted the offence of aiding and abetting and convicted and fined the appellants, who appealed.

Held: (per Lord Goddard, C.J., and Devlin, J., Slade, J., dissenting) that under ss. 17 and 18 of the Sale of Goods Act, 1893, the property in the coal passed from the Board to the purchaser only when the weight ticket was accepted by Mallender, and that, as the Board had completed the sale with the knowledge that Mallender was going to drive the lorry on the highway with an excess load, they were rightly convicted of aiding and abetting.

Per Devlin, J., a person who supplies, i.e., gives, lends, sells or otherwise transfers the right of property in an object for the commission of a crime or anything essential to its commission, aids in the commission of it; and, if he does so knowingly and with intent to aid, he abets it as well and becomes guilty of aiding and abetting. The *mens rea* necessary to constitute aiding and abetting is a matter of intent only, and does not depend on desire or motive.

Counsel: Thompson, Q.C., and Cowley, for the appellants; P. Ashworth, for the respondent.

Solicitors: Donald H. Haslam, for Lawrence C. Jenkins, Nottingham; Kingsford, Dorman & Co., for D. G. Gilman, Derby.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

CORRESPONDENCE

The Editor,

Justice of the Peace and
Local Government Review.

DEAR SIR,

LOANS BUREAUX

I have read with interest the article relating to the above which appeared in the *Justice of the Peace and Local Government Review* of July 19, 1958.

As you are aware I am the liaison officer to the North-Western Loans Bureau, and realizing that these bureaux were developing rapidly throughout the country, I suggested that a meeting should be held in London of all liaison officers to consider future policy, uniformity of procedure and regionalization of the whole country.

I convened the first meeting in February last and was appointed honorary secretary to combined liaison officers. Two further meetings have been held and there are now 14 loans bureaux in operation. The liaison officers have already considered the first point mentioned in your article—the division of the country into clearly defined areas or regions and the avoidance of any overlapping. They have also discussed at some length general principles to be recommended for the operation of loans bureaux with a view to obtaining some measure of uniformity and code of practice.

I entirely agree with the article as to the fixing of interest rates—these are agreed between the parties concerned and in the North-Western Loans Bureau are not fixed by me as liaison officer. I am aware that practice does vary and this matter is at present under consideration.

With the substantial development of loans bureaux I am at a loss to understand why any local authorities should place surplus funds at the disposal of brokers.

In order to ensure the successful operation of loans bureaux the fullest co-operation of treasurers to local authorities is absolutely essential. This has been forthcoming and now the future of these organizations is assured. Indeed, they are already handling sums of approximately £60,000,000 *per annum*, saving local authorities substantial amounts and carrying out a most useful purpose in the field of municipal finance.

Yours faithfully,

W. KNIGHT,

Liaison Officer, North-Western Loans Bureau.

Town Hall,
Nelson, Lancs.

ADDITIONS TO COMMISSIONS

MONMOUTH COUNTY

Miss Marjorie Newman Davies, The Chain, Chapel Road, Abergavenny.

Mrs. Doreen Mary Richards Edwards, Ridgeway, Christchurch, Abergavenny.

Oswald Percy Llewelyn Edwards, Lynwood, Beaufort Road, Ebbw Vale.

Kenneth Turing Gibbon, Yew Tree Cottage, Lydart, nr. Monmouth.

St. John Rosslyn Goff, 93 Green Lane, Caldicot.

Hugh James Hunter, The Cottage, Chain Road, Abergavenny.

Brigadier Cyril Knowles, The Cloisters, Llandogo, nr. Chepstow.

David Irwin Charles Lewis, Brynawel, Gladstone Road, Crumlin.

MISCELLANEOUS INFORMATION

MENTAL HEALTH STATISTICS

The supplement to the Registrar-General's Statistical Review for the years 1952 and 1953 published recently analyses statistics relating to patients in mental and mental deficiency hospitals. There are a number of tables in which first admissions to mental hospitals are distinguished from subsequent admissions, and a special chapter analysing the first admissions in 1949-1953 of men aged 20 and over according to diagnosis on admission and occupation. Serial tables are given showing trends in admissions, discharges and deaths in the years 1949-1953 and the resident populations of the hospitals at December 31 in each of these years.

The statistics show that direct admissions increased from 54,921 in 1949 to 67,422 in 1953. Rather less than two-thirds of the admissions were first admissions. In 1953, only 29 per cent. of first admissions were of certified patients.

Of the 53,864 patients who left mental hospitals in 1953 2,170 had been in hospital for two years or more, 904 of them for at least five years. For the first time since this series of statistics was begun in 1949 the median duration of stay fell below two months.

Direct admissions to mental deficiency hospitals increased from 2,712 in 1949 to 3,100 in 1953. About three-quarters of these admissions took place before the patients reached the age of 25. In 1952 and 1953 almost half the direct admissions were of feeble-minded persons, morons or high-grade defectives. Eighty-five per cent. of the 1,204 patients discharged during 1953 were in the category of the feeble-minded. The median duration of stay was just under eight years for males and nearly nine years for females.

Analysis has been made of the 1952 and 1953 admissions to mental hospitals according to the diagnosis on admission and to the occupations of patients in the groups traditionally known as the Registrar-General's Social Classes (I professional, II managerial, III skilled, IV semi-skilled, V unskilled). For alcoholism rates in Class I were considerably higher at ages 35 and over than for younger men. But in Social Class V there was not the same marked difference in rates between the age-groups.

COUNTY OF DORSET: CHIEF CONSTABLE'S REPORT FOR 1957

It is pleasing to call attention to the fact that this force, on December 31, 1957, had an actual strength of two in excess of its authorized establishment of 430. In the introduction to the report, the chief constable notes that every year the task of the police becomes harder, and there are so many duties to be performed that all too few men are left available for the basically important duty of patrolling which is "the most effective deterrent and detective agency." A local trouble with which this force has to deal is the escapes from the borstal institution and the Verne Prison, Portland. There were only seven in 1955, but 22 occurred in 1956 and in 1957 the total jumped to 52. The 52 were all recaptured, but the task takes up a great deal of police time which is badly needed for other purposes. One cannot help wondering whether the methods of preventing and discouraging such escapes are as effective as they ought to be. Apart from the loss of police time involved there must be considerable alarm amongst the local inhabitants when these prisoners are at large.

Now that police cadets are not required to undertake national service, the chief constable feels that before they join the regular force the cadets need some other form of mind broadening experience and he favours the courses at the Outward Bound Mountain Schools at Eskdale and Ullswater. Two cadets have been selected to attend at Eskdale in the Spring of 1958 and it is hoped to send others later in the year.

Crimes recorded during 1957 numbered 3,795, with 1,623 detected (296 from 1956). The 1956 figures were 3,444, with 1,509 detected (166 from 1955). It is pointed out that a smaller percentage of detections, from a larger number of crimes, does not imply less efficient police work. The more crimes there are the more time has to be spent on investigations, which take men off the streets. Thus more crime can be committed and there is less time available for the investigation of individual cases, and so on in a vicious circle.

Road traffic offences increased by 1,127 to a total of 9,921. Four thousand, four hundred and two of these were dealt with by written cautions. Traffic accidents totalled 3,637, seven more than in 1956. It was calculated that 53 per cent. of accidents were due to careless driving or errors of judgment by motor drivers.

THE COUNTY BOROUGH OF HUDDERSFIELD: CHIEF CONSTABLE'S REPORT FOR 1957

A net wastage of three men reduced the actual strength to 225. The authorized establishment is 237. Fourteen male recruits were appointed during the year, but 14 resigned. Of these nine were probationers. The chief constable is able to report, however, that a number of well educated men have been enrolled into the force and he is satisfied that the standard is such that the watch committee will have ample choice to fill whatever rank may become vacant for many years to come. We note from the end of the report that one such rank is that of chief constable, this being the last report to be submitted by the holder of that office.

Considerable space is devoted in the report to the police juvenile liaison scheme. Various opinions have been expressed about such schemes, particularly on the propriety of dealing in this way with cases which otherwise would be taken before a juvenile court. But it has to be borne in mind that it is a primary duty of the police to prevent crime and the claim is made in this report that many cases are now brought to the notice of police by parents, headmasters and other interested parties which otherwise would not have been and that this is due to the removal of the fear of court proceedings. The chief constable writes "I am more than satisfied that this work is of great importance and it is of benefit to the community. During 1957, 125 juveniles were dealt with under the scheme, 88 in respect of indictable offences and 37 in respect of other matters (beyond parental control, running away from home, etc.). Of the total six have since been taken before the juvenile court because of further offences."

Recorded crimes in 1957 numbered 1,028; 771 were detected and 404 persons (including 96 juveniles) were prosecuted in consequence. The 1956 figures were 947, 685 and 387 (124 juveniles). Two thousand seven hundred persons were prosecuted for summary offences against 2,374 in 1956; 2,499 of the 1957 total were dealt with for some 2,788 motoring offences. There were 15 prosecutions for driving, or being in charge of, motor vehicles when under the influence of drink.

Traffic congestion grows worse, particularly in the town centre, and adds greatly to the work of the police. Suggestions for alleviating the trouble are being considered.

KENT COUNTY ARCHIVES OFFICE

The Kent county council was one of the first large local authorities to realize the importance of an archives office and has issued recently a booklet showing what has been achieved during the 25 years of its existence. The council not only maintains a special staff for the work but also provides a repairing service. The repository built to house the records is probably one of the best in the country. But a record office must provide a service far beyond the immediate authority to which it owes its existence. As explained in the booklet other authorities—boroughs, parishes, statutory boards and so forth—can deposit their records on loan and thus avail themselves of the archives service provided by the county council. So, too, private owners may use the service as a means of preserving and caring for their muniments, especially when the break-up of an estate is imminent. The office is thus a centre of activity directed towards the preservation of priceless material of the past for the use of the present and of the future. The deposit of such accumulations as the Canterbury and Rochester Probate Records, the archives of the old boroughs of Queensborough, Sandwich and Tenterden, and the muniments of many notable Kentish families, indicates a combination of interests between preservation and usage and between owner, county council and searcher.

During the past five years the emphasis has been placed on making the records available for research. The policy of holding public exhibitions has also been developed. Talks given by the staff have brought the office to the notice of a wider public than the professional historians and local antiquarians who make use of the facilities in the search rooms. The museum or exhibition room on the top floor of the records building is a recent innovation. The items shown are chosen either for some unusual quality or for outstanding artistic, historical or literary value, and the exhibits are changed periodically.

As pointed out in an introduction to the booklet by the chairman of the archives committee, local authorities as well as private individuals are realizing that they can use the office. In this, the county council is certainly providing a very valuable service.

REVIEWS

Green's Death Duties. Fourth Edition. By C. D. Harding. London: Butterworth & Co. (Publishers) Ltd. 1958. Price 95s. net.

It is in the nature of death duties, at any rate when they are so high as to make the attempt worth while, that persons of property will instruct their advisers to devote ingenuity to finding lawful methods of avoidance. The revenue authorities must devote equal ingenuity to defeating these attempts; when they fail to do so in the courts, the Chancellor of the Exchequer is likely to move Parliament to alter the law, so as to prevent in future whatever was the method adopted by the successful taxpayer. In saying this, we are not imputing blame either to taxpayers and their advisers or to revenue officials. The courts have recognized again and again that a man is entitled so to order his affairs as to avoid taxation, provided that he does not resort to deceit, while the duty of public officials is to protect the general body of taxpayers against avoidance of tax by those people whose property is large enough to make the attempt worth while. So also Parliament must be entitled to alter the wording of a taxing statute, as soon as the courts have established that the existing wording fails to give effect to what Parliament had in mind when it was enacted. These glimpses of the obvious may seem out of place in a book review, but there is so much loose talk about the usuriousness of revenue officials, and on the other hand about avoidance as if it was the same thing as evasion, that it seems worth while to state the essentials of the matter. The twin processes, of avoidance and pursuit, have meant that any work on the subject of death duties is likely to become obsolescent fairly quickly: obsolescent but not obsolete, because much of the law can be regarded as the foundation for a structure to which additions are constantly being made, both in decisions of the courts and by legislation.

It is now six years since the third edition of *Green*, and in each year except 1955 the Finance Act has produced alterations of the statute law, some of them far reaching and important. As for litigation, the preface to the present edition remarks that the high rate of duty on all but the smallest estates has led counsel and the Judges to re-examine some long-standing assumptions; interpretations of the law have been questioned for the first time in many years. One result of this is that the new edition of *Green* is longer than the third, although it is not quite so bulky as it looks: this, because of the admirable clarity with which the pages are spaced, and of the quality of the paper and printing.

The law as stated in the volume is that which existed on November 1, 1957, so that it takes account of last year's Finance Act, and of decisions up to last year's long vacation. Mr. Harding admits in his preface that some complicated provisions of that Act, as regards gifts *inter vivos* and life interests, may yet need to be worked out in litigation. This is inevitable when Parliament tries to express in precise language a rule or group of rules designed to apply to a great variety of circumstances.

Rather similar remarks may be made about the provisions of the Finance Act, 1954, dealing with the valuation of shares; the editor has taken the opportunity of a new edition to re-write some parts of the book relating to the taxation on death of company assets such as shares and goodwill. The Act of 1954 was notable also for other modifications of the previous law, which are dealt with in their proper places.

The first 620 pages of the book are devoted to a narrative account of estate duty, and then come rather more than 100 pages under the heading "miscellaneous," relating to other forms of death duty existing, obsolete or obsolescent. Legacy and succession duties, for example, though one often sees reference to them today, are on their way out, but they cannot be ignored.

Part I, dealing with estate duty, falls into 15 chapters beginning with a lucid explanation of this form of tax. It proceeds to discuss ancillary matters such as dispositions *inter vivos*, so far as relevant to estate duty, and exemptions and reliefs. It sets out the rates of duty and the methods of valuation and payment, with a long chapter on the complicated topic of double taxation. Some matters of detail are dealt with in the final chapters of this part, such as the treatment of timber and of objects of national interest.

After the narrative portion of the book, which (taking estate duty and "miscellaneous" together) occupies more than 700 pages, there come extracts from a large number of statutes and statutory rules and orders. Some of these are procedural and some relate to double taxation. A third appendix sets out for reference some 50 pages of repealed enactments.

The editor, although scrupulous to explain in the preface that

he alone is responsible for the work, is a member of the staff of the Estate Duty Office. The book has been written and edited with the permission of the Board of Inland Revenue. Although it is in no way an official publication it will no doubt be found to indicate the view taken by the Revenue upon points which have not yet been decided by the courts. We have already spoken of the handsome get-up of the book. It is No. 10 in Messrs. Butterworth's series of "Modern Textbooks," and is an imposing addition to the lawyer's bookshelves. More important, it is likely to be a work of almost daily reference for the family solicitor.

Prison Governor. By Major B. D. Grew. London: Herbert Jenkins. Price 21s.

Major Grew has had 35 years in prison administration. He began as deputy governor of borstal, proceeded as deputy governor of Dartmoor, and served as governor at Shrewsbury, Durham, Maidstone, Wandsworth and Wormwood Scrubs. It follows, therefore, that what he has to say about prisons and prisoners deserves the closest attention; not often do we have a book from one with this degree of experience.

He writes vivaciously and clearly, and, following his career since he entered the prison service in 1922, we can see what remarkable changes have taken place in prison administration in the last 35 years. In general, the development has been along lines aimed at cultivating and re-educating the minds and characters of those who fall foul of the law. It is a course which carries its own dangers, all of which Major Grew sees clearly enough; but his faith in human nature is undiminished, and he is convinced that things are moving along the right lines even if there is a long way to go before the perfect penal system can be said to have been evolved.

Perhaps the most interesting part of his book is that which deals with young offenders. He is convinced that the main cause of juvenile delinquency, and of criminal habits against young people, is to be found in parental failing. In particular he emphasizes the decline of discipline; he professes himself—and how refreshing it is to meet this attitude—a firm believer in the right use of discipline. In his experience prisoners appreciate firmness more than indulgence.

What Major Grew has to tell us about the training methods instituted at Maidstone is of great interest. Here surely is a hopeful field, and one permitting a wide range of legitimate experiment. Major Grew is unhappy about the lack of uniformity in the facilities offered by prisons for training; certainly it seems from his pages that one or two prisons have been allowed to set a pace which, admirable though it is, demands speedy emulation by others if the prison service is to operate fairly over the country as a whole.

This is a book which can be read with profit and pleasure by all who have any interest in the present state of our penal system and in the nature of criminal impulses.

The Sanctity of Life and the Criminal Law. By Glanville Williams. London: Faber & Faber. Price 30s.

This important book is based on lectures delivered by the author at Columbia University and before the Association of the Bar of the City of New York.

It could hardly be published at a more apposite moment as it deals with extraordinary thoroughness with a whole series of human problems now very much in the forefront of informed thinking. In particular, the chapters on artificial insemination, the law of abortion, and suicide, deserve close study from all—and they are many who would wish the authorities to make a serious effort to align the public law with a humane interpretation of the problems which underlie these issues.

The book is exceptional in that at every point of his exposition and argument, Dr. Williams gives us the most detailed historical background preceding the present state of the law on the matters he discusses. There can be few who will read this book without learning an immense amount of social history which, in the nature of things, is inaccessible to the ordinary informed reader. Dr. Williams must have devoted an immense amount of time and care to study, and his reward must be the knowledge that his book is as authoritative and as up-to-date as anyone could desire.

The controversial character of the matters dealt with by Dr. Williams makes it inevitable that, here and there, he will express an opinion or utter a judgment from which one might reasonably dissent. Argument has waged for centuries on the legal restraints necessary to control, for instance, abortion, and it is likely to wage for a good many years to come, but with the publication

of this book bringing a flood of new light on the history of this matter, there can be no excuse in future for anybody forming glib conclusions. Similarly, with the more novel problem of artificial insemination, it is of extreme importance that discussion should be joined on grounds acceptable alike to scientist and lawyer. It is just no use rushing into this matter in terms of sentiment: the issues are grave enough for the parents of a child conceived by A.I.D.; they are infinitely graver for the child itself. It is a merit of Dr. Williams' treatment of the subject that he deals very fully with the difficult issue of legitimacy in this context; but even so, what he has to say only throws into relief the immense difficulty which will face Parliament if and when legislation is initiated. Great interest will be aroused by Dr. Williams' treatment of the problem of adultery in relation to A.I.D. and it is here, perhaps, that some legitimate dissent from his argument will be aroused, largely, on religious grounds. Incidentally, we must be profoundly grateful that throughout the book Dr. Williams meets religious arguments, Catholic and Protestant, honestly and in detail. It is a great treat to find a

writer on these matters who shows himself so conscious of the spiritual implications of his subject.

On the law of suicide, Dr. Williams has much to say: he is batting here on an easy wicket, and they will be few indeed who will not be convinced by his general conclusion calling for drastic changes in the law as to attempted suicide. One reads his exhaustive exposition of the history, theological as well as legal, of this subject with something like dismay at its revelation of inhumanity. Here, surely, our society has gone badly adrift; here, beyond doubt, the present state of the law is out of touch with general sentiment.

We have dealt with only some of the matters covered in this enlightened book. No finer legal work has come our way for a very long time. One's only hope is that in the later editions, which will assuredly be necessitated, some amendments will be required in the text to bring the book into line with legislation which will surely be hastened by the close study of these pages on the part of those who exercise any influence upon the administration of public law.

WORDS AND PHRASES

An important rule of interpretation for testamentary documents was laid down, 230 years ago, in *Lowe v. Davies* (1729) 2 Ld. Raym. 1561, viz., that the court may construe a word in some special sense if the will clearly indicates that the testator is using the word in that sense. This, the so-called "dictionary principle", applies nowadays not only to wills, but also to Acts of Parliament and public and private legal documents of every kind. Sometimes the word or phrase has acquired a special meaning under common law usage or by judicial decision, as with the phrase "malice aforethought" in cases of murder. Sometimes the document contains a definition clause, and then no difficulty arises—as with the word "purchaser" in the property legislation of 1925. But where the draftsman has omitted to define his terms, the court may be compelled to gather the meaning from the context. Such cases are apt to prove fruitful of litigation, as in *Perrin v. Morgan* [1943] A.C. 309, where such an everyday phrase as "all moneys of which I die possessed" was construed literally by the Chancery Division and the Court of Appeal before the House of Lords eventually decided that, in the special context of that particular will, the word "moneys" was to be understood in the sense of "property" or "estate".

One great difficulty is that precedent alone is not a safe guide through the labyrinth of legal jargon. The mere fact that the language used in one document is similar to that used in another by a different hand does not by any means bind the court to adopt a similar construction in each case. This corollary to the principle of *Lowe v. Davies*, *supra*, was once enunciated by Buller, J., in the arresting phrase: "The nonsense of one man cannot be a guide for that of another" (*Smith v. Coffin* (1795) 2 H. Bl. 444). Every testator—and for that matter every lawyer—must step warily towards the door invitingly opened by the former decision if he is to avoid the dangerous trap disclosed by the latter.

The late Lord Atkin gave expression to his legal erudition and, at the same time, revealed his profound consciousness of the importance of literary example, when he delivered himself of the following opinion—this time on the interpretation of the Defence (General) Regulations, 1939:

"I know of only one authority which might justify the suggested method of construction: 'When I use a word' Humpty Dumpty said in rather a scornful tone, 'it means just what I choose it to mean—neither more nor less.' 'The question is' said Alice, 'whether you can make words mean so many different things.' 'The question is' said Humpty Dumpty, 'which is to be Master—that's all'" (*Liversidge v. Anderson* [1942] A.C. 206).

The quotation in the speech of the noble and learned lord precedes a passage, in the original source, which clearly illustrates the importance of a definition clause:

"Impenetrability! That's what I say!" said Humpty Dumpty . . . "I meant by 'impenetrability' that we've had enough of that subject, and it would be just as well if you'd mention what you mean to do next, as I suppose you don't mean to stop here all the rest of your life."

The author of *Through the Looking Glass* was a mathematician, and the necessity for definitions and postulates would be as present to his mind as it ought to be to the mind of the lawyer. In 1871, when the book came out, his mock seriousness provided a welcome relief from the cant and humbug of mid-Victorianism; today, his rational lucidity and relentless logic, shining through the translucent fantasy in which they are clothed, afford to thoughtful minds a refuge from the dull platitudes of statesmen and the cruel insanities of power politics. Fortunately he does not stand alone.

That same year of 1871 also saw the maturing of the genius of Edward Lear. The Arts Council of Great Britain has recently paid tribute to his memory with an exhibition of his artistic and literary works. If Carroll is an upholder of the definition clause, Lear is an exponent of the dictionary principle—for his meaning has frequently to be inferred from the context of his writings. He is, in a sense, the first true surrealist in English art and letters. He popularized the "limerick" and wrote and illustrated nonsense verses and stories in great profusion; he was also a serious landscape-painter, and in 1846 gave drawing lessons to Queen Victoria herself. He was a versatile and prolific entertainer of children; he travelled widely—as far afield as Sicily, the Balkans, the Middle East, India and Ceylon—and set down vividly and in great detail the strange things he observed. He produced coloured lithographs for learned zoological and ornithological text-books; at the same time he made delightful sketches and drawings of the imaginary creatures that peopled his private world. He was terrified of women and never ventured upon the uncharted sea of matrimony; but he was devoted to his tom-cat, Foss, whom he loved to caricature in strange attitudes and heraldic poses, and whom he did not long survive.

Lear's eccentric and endearing sense of humour was proof against financial misfortune and lifelong ill-health. His father was made bankrupt and imprisoned for debt in 1825,

in Edward's thirteenth year. The boy was brought up by his sister Ann; his bent for drawing enabled him to earn some sort of living at the age of 15. All his life he suffered from asthma, bronchitis, bad eyesight and, worst of all, epilepsy. Psychologically he was a prey to lingering depressions and feelings of frustration. The product of these disabilities was his nonsense-idiom, creating an unreal atmosphere in which misfortunes and catastrophes appeared remote, bizarre and even laughable.

His use of the verse-form known as the "limerick" has been criticized by persons lacking in taste and aesthetic sense. The "limerick" of today (printable or unprintable) has become an epigram, the sting of which is in the tail. In Lear's style of "limerick" the last line almost identically reproduces the first; the whole point is that it has *no* point whatsoever. For example:

"There was an Old Man in a boat
Who said 'I'm afloat! I'm afloat!'
When they said 'No you ain't!'
He was ready to faint—
That unhappy Old Man in a boat."

"They"—that is, the denizens of the real world—the bustling, noisy, frightening world of frustration and neglect—appear in many of his works of this period.

He parodied his own illustrations to botanical treatises with fantastic diagrams of imaginary plants. "Manypeepia Upsidownia" shows a giant growth with half-a-dozen human beings suspended from it, feet upwards; "Smalltoothcomb Domesticia" is a plant with toothcombs growing among its leaves. *Nonsense Cookery* contains recipes for Amblongus Pie, Crumbobblous Cutlets and Gosky Patties, the last-mentioned including as ingredients "cream, slices of Cheshire cheese, four quires of foolscap paper, and a packet of black pins." His most moving poem—*The Dong with a Luminous Nose*—is too long for quotation, but it abounds in vivid solecisms—"the great Grombolian plain," "the hills of the Chankly Bore," "the bark of the Twangum Tree," "landing at eve near the Zemmary Fidd"—expressions which, in the context of the poem, call up an image twilit, mysterious and remote. So do *The Jumblies*, with their repeated refrain:

"Far and few, far and few
Are the lands where the Jumblies live;
Their heads are green and their hands are blue,
And they went to sea in a Sieve."

The best-known of his poems—with most affecting illustrations—is *The Owl and the Pussy-Cat*; nobody is surprised to read that—

"They dined on mince, and slices of quince,
Which they ate with a runcible spoon;"

nor would any reader show himself so ungrateful, or so deficient in literary taste, as to feel doubts about the significance of the penultimate word.

Among his prose-works—charmingly illustrated by himself—is the *Story of the Four Little Children who went round the World*. Their names are Violet, Slingsby, Guy and Lionel, and a single quotation will suffice to illustrate Lear's mastery of the "dictionary principle," and its superiority to the less colourful definition clause:

"The Moon was shining slobaciously from the star-besprinkled sky, while her light irrigated the smooth and shiny sides and wings and backs of the Blue-Bottle Flies with a peculiar and trivial splendour, while all nature cheerfully responded to the cerulæan and conspicuous circumstances."

A.L.P.

SHORTER NOTICES

CRIMINAL JUSTICE IN THE U.S.S.R.

There is an interesting article in the Autumn, 1957, issue of the *Anglo-Soviet Journal* by a member of the Institute of Law of the U.S.S.R. Academy of Sciences on the subject of "Further Reinforcement of Socialist Legality." Despite the unpromising title, the article is found to contain an interesting account of penal methods and criminal justice following recent reforms in the Soviet Union. It is stated that now except in cases of espionage (which, from our other reading, appears to have a wider definition than in this country), the procurator's office must in particular ensure that no one is subjected to arrest otherwise than as established by law, *i.e.*, by decision of a court or with the sanction of the procurator. The procurator appears to have a variety of functions in the U.S.S.R.—a sort of Commissioner of Prisons, Director of Public Prosecutions and Judge in Chambers rolled into one if we may judge from the brief description of his functions given in this journal.

On the subject of penology—it is stated that the continued existence of corrective labour camps is recognized as undesirable, and these are being reorganized into corrective labour colonies—that is, the "re-education of prisoners by involving them in socially useful labour." Earlier than 1955, a court was obliged to impose "imprisonment for prolonged periods" for petty pilfering—but an edict of that year reduced the penalty for first offenders to corrective labour without deprivation of liberty for six months to a year, with a deduction of not more than 25 per cent. of wages as a fine, or imprisonment for three months. The age of criminal responsibility in the Soviet Union is now 12, but Soviet jurists are reported as considering it desirable to increase this to 14.

AND IN TEXAS

Number 1 of vol. 36 of the *Texas Law Review* contains a note on the subject of punishment in Texas.

As might be expected in an American state, the right of trial by jury remains inviolate, but it comes as a surprise to read that as to punishment, the jury itself assesses this in all cases in which it is not absolutely fixed by law to some particular penalty. Consequently, in Texas, the jury usually assesses the punishment.

The punishments that may be imposed are death, imprisonment in the penitentiary, imprisonment in the county jail, imposition of fines, forfeiture of civil or political rights (such as holding office, serving on juries, and of suffrage) and imprisonment in training schools and similar institutions. But the penal code prohibits any forfeiture of a convict's property to the State, whether he be executed or merely imprisoned.

Sentencing policy appears somewhat crude: for misdemeanours, recidivists receive double punishment on the second conviction, and upon a third or subsequent conviction for the same offence the punishment shall be increased so as not to exceed four times the penalty in ordinary cases. For felonies, on third convictions, the person may be imprisoned for life in the penitentiary. Probation is said to have proved "ineffective" since it was first introduced 10 years ago—but a new enactment has recently been passed. This, however, still does not permit probation to be tried on any defendant previously convicted of a felony.

The "suspended sentence" is in operation in respect of some felonies (it is not applicable to the rough equivalent of our own non-indictable offences) where the defendant has never before been found guilty of a felony. The jury can recommend this form of sentence—where the convict has no sentence at all pronounced upon him.

Acting upon the recommendations of a majority of a Board of Pardons and Paroles, except in cases of treason and impeachment, the Governor has power to remit fines, grant reprieves, make commutations of punishments and to grant pardons. The Board and Governor can also release on parole any person who has served one-third the maximum sentence imposed or has served 15 years. Apparently this device of conditional pardon is preferred in Texas to parole. Finally, the Board can release prisoners on commutation of sentence for good conduct.

The article concludes with an admission that Texas languishes as a backward state in the field of criminal punishment. It is further stated that the criminal population is growing three times faster than the general population.

NOW TURN TO PAGE 1

There is no power to commit a corporation to quarter sessions for sentence. (Magistrates' Courts Act, 1952, sch. 2.)

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—Child born during mother's previous marriage—Birth concealed from former husband—Joint adoption by mother and present husband, father of the child—Should first husband be made respondent?

On January 13, 1953, Mrs. A (a married woman) gave birth to a child without her husband's knowledge. On November 27, 1956 (three years and 11 months after the birth) she obtained a divorce from her husband on the grounds of his alleged cruelty and desertion. It does not appear that she ever disclosed her adultery in the divorce proceedings. The question of custody was never dealt with. She has since married B who claims that he was the father of her child. Mrs. A accepts this although in registering the birth she left the name and surname of the father blank. Mrs. A and B now wish to adopt the child and the question arises whether the consent of Mrs. A's first husband is necessary, or whether he should be made a respondent and given notice of the intended application. The probability is that Mrs. A's first husband has no knowledge of the child's existence, but as it was born in wedlock he is presumed to be the father and the justices should require his consent to the adoption unless satisfactory proof can be given to them of the child's illegitimacy. What evidence should the justices require to rebut that presumption to enable them to proceed upon the adoption application without reference in any way to Mrs. A's first husband? The production of the decree absolute would show that he had deserted her at least three years preceding the presentation of the petition, but that is no proof that they never had intercourse during that period.

The mother can produce the birth certificate which she caused to be registered with the father's name left in blank, but that alone is not proof of the illegitimacy. What corroborative evidence should be required? It is submitted that the additional evidence of B who is in the nature of an accomplice would not suffice to enable the justices to make an order. Your general advice to the justices is requested.

Answer.

FASTON.

The presumption that the first husband is the father of the child is rebuttable and since, by s. 32 of the Matrimonial Causes Act, 1950, the evidence of a husband or wife is admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period, we see no reason why the wife should not give evidence on oath to prove that her first husband was not the father of the child. We do not understand why corroboration should be thought necessary or why her husband should be regarded as an accomplice. If the mother can give evidence, so can her present husband. If they are believed, the ex-husband need not be made respondent nor would his consent to the adoption be necessary.

2.—Criminal Law—Obtaining credit by fraud—Hire of car by means of false statements.

I shall be grateful if you will kindly let me have your opinion as to whether the following circumstances disclose an offence against s. 13 of the Debtors Act, 1869:

A firm operates a self-drive car hire service. It is a rule of the firm that, except in the case of responsible persons known to the firm, a car hirer shall pay in advance for the hire of a car.

A person who is a stranger to the firm approaches one of the partners and makes false statements as to his employment and earnings on the faith of which the partner agrees to hire him a car and agrees to accept payment for the hire at a later date.

The person hiring the car has not made payment, as promised, and, in effect, acknowledges that he obtained the car, without being required to pay therefor in advance, on the faith of his false statements.

Answer.

HARON.

The facts in this case disclose the three ingredients laid down in *R. v. Ingram* (1956) 120 J.P. 397; [1956] 2 All E.R. 639 as being necessary to found the offence of obtaining credit by fraud, contrary to s. 13 (1) of the Debtors Act, 1869. In that case it was emphasized that mere delay in paying a debt or doing work is not a criminal offence, but we think the facts in the present case go well beyond mere delay in payment.

3.—Criminal Law—Magistrates' Courts Act, 1957—Offender gives another person's name, is summoned in that name and signs a "plea of guilty form" in that name—Offence of forgery.

A case has recently come to light in my division, which may be of interest under the new Magistrates' Courts Act, 1957.

Shortly, the facts are that a male person was driving a motor vehicle when he failed to conform to a traffic signal and was stopped by a police officer. This person gave a name and address and his age as 17 years. He failed to produce a driving licence and certificate of insurance, but later produced these documents at another police station which appeared in order.

A summons was issued, and this, together with form 1 (notice to defendant; plea of guilty in absence), form 2 (statement of facts) and a form to be used if the person wished to plead "guilty," were sent to him by registered post to the address he had furnished. All these forms were in accordance with the Magistrates Courts' Acts, 1957, and the Magistrates Courts Rules, 1957.

A few days later the "guilty plea" form was received at the office of the clerk to the justices, from this person, properly completed and signed in the name he had given to the police officer, stating that it was his wish to plead "guilty," and requesting the justices to hear the case in his absence.

Before the summons was due for hearing, this person called at the police station where he had been reported, stating that when he was stopped by the police he gave a wrong name and address and a wrong age. It was then ascertained that he was 16 years of age, and the name and address he had used was that of his employer, the driving licence and certificate of insurance were those of the employer, and in completing the "guilty plea" form he had also used the name and address of his employer. All this was known to the employer, who had assisted the youth by handing him his driving licence and certificate.

A number of traffic offences have now come to light against the youth and his employer.

I should be obliged by your opinion on the following point: as this youth accepted the summons and forms under the Magistrates' Courts Act, 1957, and completed the "guilty plea" form which he knew at the time was a false statement, and could be used in court under the Act, does he commit any offence against s. 82 of the Magistrates' Courts Act, 1952, or would proceedings have to be taken on indictment under s. 4 of the Forgery Act, 1913?

Answer.

JETAM.

Section 82 of the Act of 1952 applies only, in our view, to documents used under r. 55 of the Magistrates' Courts Rules, 1952. So far as s. 4 of the Forgery Act is concerned this is not a "public document" within s. 4 (2) and there is no intent to defraud within s. 4 (1).

We think that s. 3 (3) (f) of the Forgery Act, 1913, may be relied upon on the ground that the plea of guilty form is a document upon which, by the law at the time in force, a court of justice might act, and there is a clear intent to deceive.

4.—Criminal Law—Perjury Act, 1911, s. 3 (1) (a)—Notice given under s. 8 of the Marriage Act, 1949.

We are concerned with the consideration of a prosecution of a charge under s. 3 (1) (a) of the Perjury Act, 1911. The facts are that a man visited his local vicar and gave notice in writing of his request that banns of marriage be published in the church. The form of notice is one headed "Notice to be given at least seven days before banns of marriage are published," and is always required by the vicar before publishing such banns. The man described himself as a "bachelor" and signed the form (although he was married at the time).

The question with which we are concerned is whether this is a false notice "required under any Act of Parliament relating to marriage."

We believe that s. 8 of the Marriage Act, 1949, is the section which empowers a clergyman to require such notice in writing as is mentioned above. We referred to s. 8 of this Act in vol. 28 of *Halsbury's Statutes* (2nd edn.) on p. 661. The section on that page is followed by a footnote which indicates the belief that the notice in writing mentioned above is not a notice required under

any Act. We should be glad of your views upon the three following points, which occur to ourselves:

1. While it is clear that this notice is not one which is prescribed nor required by the Act, nevertheless it might be that it is a notice which is required under the Act. The word "under" is used in the said Act and not the word "by." We submit that the clergyman certainly requires the notice and that his power to do so is under the Marriage Act, 1949. We are therefore venturing to disagree with the footnote in *Halsbury*.

2. Section 8 of the Marriage Act empowers only the name and place of residence and period thereof to be asked for in such notice. It does not require any statement as to whether the person is a bachelor or not, and one submission might be that since no description of the state of the person is required a falseness in giving the state as being "single" when in fact the person is married is immaterial. A contrary argument might be that the notice contains a false statement as to bachelorhood and therefore the notice is false and s. 3 of the said Act is satisfied. Which of these interpretations do you consider to be more accurate?

3. If s. 3 (1) (a) of the said Act is not the proper section under which such a prosecution should be brought, can you refer us to any other section under which a prosecution might be brought on the facts given.

Answer.

1. The note referred to in *Halsbury* is an opinion but it is an opinion with which we respectfully agree. The clergyman is entitled to such notice but he can dispense with it at his own risk and for that reason we would say that it is not a notice "required under any Act of Parliament."

2. Does not arise.

3. Although it is obviously undesirable that such false statements should be made, we can think of no specific offence which has been committed. We would suggest that the facts be reported to the Director of Public Prosecutions for his advice.

5.—*Justices—Clergyman—Chairman of district council—Sitting as ex-officio justice.*

The chairman elected of one of the district councils is the rector of the parish church and I shall be glad if you could kindly let me know whether there is any restriction on his acting as an

ex-officio magistrate during the term of his office and being sworn in as a magistrate.

IPORA.

Answer.

Halsbury's Laws of England, 2nd. edn., vol. 21, at p. 534 state that no one is now disqualified for the office of justice of the peace on the ground of his profession, but there is a footnote which states that as a general rule clergymen, *inter alia*, are not appointed justices but may be in exceptional circumstances. We think that the rector is not debarred from being sworn in and sitting but that, having regard to the general rule referred to above, he might like to ask the clerk to the justices to seek advice from the Lord Chancellor's department on the matter.

6.—*Landlord and Tenant—Business Premises—Notice terminating tenancy—Tenant takes no action.*

On March 29, 1958, the landlord of business premises served a notice to terminate tenancy on the tenant in the statutory form under s. 25 of the Landlord and Tenant Act, 1954, such notice to expire on October 6, 1958. Paragraph 2 of the notice required the tenant to notify the landlord in writing within two months whether or not he was willing to give up possession on that date. As none of the grounds specified in the Act were applicable, the landlord stated in para. 3 that he would not oppose an application to the court for the grant of a new tenancy. The tenant has not notified the landlord in writing as required by para. 2 of the notice. Is the tenant now precluded from applying for the grant of a fresh tenancy, or does he automatically become entitled to one because the landlord stated he would not oppose an application? In any event the next available county court is in August, which is more than four months after receipt of the notice (see note 2 to the statutory form).

A. IGNOR.

Answer.

When it is said that "none of the grounds specified in the Act were applicable," we take this to refer to s. 30. Inasmuch as the tenant did not within two months notify the landlord that he was unwilling to give up possession, he cannot in our opinion apply under s. 26. The landlord's statement (that he would not oppose) looked to the position if the tenant did apply under s. 26; it cannot be regarded as granting a fresh tenancy.

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OYEZ PRACTICE NOTES No. 41

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7.—Licensing—Change of sign-name of licensed premises.

The owners of licensed premises have intimated a desire to change the name of their premises. I believe the procedure is that formal application is made to the justices who consider the application at normal sittings and if granted, a fee of 5s. is paid, and the change of name recorded in the licensing register. However I cannot find confirmation of this in *Stone* or *Paterson* and should be very glad if you could kindly confirm or assist me in any way.

OLEBA.

Answer.

Licensing law does not require that application is to be made to licensing justices although it is desirable on administrative grounds that they should be informed of the intended change. It is convenient for this intimation to be given when the licence comes up for renewal at the general annual licensing meeting, but the law does not prohibit the change being made at any time and at the will of the licence holder. A note of the change should be endorsed on the licence and in the register of licences kept in accordance with s. 40 of the Licensing Act, 1953. No fee seems to be chargeable.

See answers to Practical Points at 98 J.P.N. 246; 113 J.P.N. 196; 117 J.P.N. 471; 122 J.P.N. 424.

8.—Magistrates—Jurisdiction and powers—Means inquiry—Defendant refusing to answer questions—Committal.

A defendant appeared before my court under a transfer of fine order for an examination as to his means, as he had failed to pay anything off a total of £6 10s.

It is believed that the defendant has a mental history and that he has nothing on which to distrain. The defendant declined to give any information about himself beyond the fact that he had no job, and he did not even know whether he was registered in the labour exchange. To any further questions he merely replied that he was not prepared to discuss his private affairs in open court.

The magistrates adjourned the case so that inquiries might be made as to whether the labour exchange had work for him, but on the assumption that they were unable to provide him with work, so as to put him in a position in which he could pay if he wanted to, I am somewhat disturbed to know what is the proper course.

It seems to me that owing to s. 70 of the Magistrates' Courts Act, 1952, he cannot be committed to prison without an inquiry as to his means, but if no evidence as to his means is available from himself or anybody else, it would appear that he can properly be committed, as there is no onus on anyone to prove that he has or has had means (*R. v. Dunne, ex parte Sinnatt* (1943) 107 J.P. 161; [1943] 2 All E.R. 222).

If I am correct above and point this out to him, and he then proceeds to go into the witness box and give evidence that he has no means my magistrates would be precluded from committing him (*R. v. Woking JJ., ex parte Johnstone* (1942) 106 J.P. 232; [1942] 2 All E.R. 179). If we get this far but he declines to answer questions in cross-examination, it seems that my magistrates can commit him to prison under s. 77 (4) of the Magistrates' Courts Act, 1952. There is however a note to this subsection in *Stone* that this power to commit "extends to all recalcitrant witnesses present in court, whether brought before the court by summons or warrant or otherwise under this section or attending voluntarily." This defendant is I think a witness, but he is not brought before the court under s. 77. No authority is given for this note, and would the court be properly advised to commit in this case?

I know little about the defendant's mental condition, but he gives the impression (as he gave it to the probation officer who has made inquiries) that he is not going to pay whatever else happens, and I feel therefore that if my magistrates can properly do so, he ought to be committed *pour encourager les autres* if for nothing else.

Your advice and assistance would be very gratefully appreciated.

J. SENEX.

Answer.

We do not think that the power of committal given by s. 77 (4) of the Magistrates' Courts Act is appropriate to this case. In our view the effect of the cases cited in the question is that if the court is satisfied that the defendant neither has nor has had the means to pay his fine, they may not commit him. But a defendant must so satisfy the court by evidence which they accept; he cannot fulfil this obligation merely by stating that he has no means and then refusing to answer questions on the matter. In such circumstances the court may well feel that the evidence does not satisfy them that the defendant has no means, and they may commit him in default of payment.

9.—Road Traffic Acts—Accident involving personal injury—No request at time for production of insurance certificate—Duty to produce at police station under s. 40 (2) of the Act of 1930.

If a person is charged under s. 40 (2), Road Traffic Act, 1930, it is our view that if no request is made to the driver by a police constable or by some other person (having reasonable grounds, etc.) to produce his certificate of insurance, then no offence is committed under the section if the driver does not produce the certificate. No charge is preferred under s. 22 (1) (2) of the Act. ITALO.

Answer.

We answered a similar question at 112 J.P.N. 160, P.P. 10.

In our view s. 40 (2) applies whenever, for whatever reason, the certificate of insurance is not in fact produced at the time of the accident to a police constable or to some other person who has reasonable grounds for requiring its production. It is immaterial that no request was made, and the fact that no charge is made under s. 22 (1) (2) (which is not concerned with the certificate of insurance) is irrelevant.

10.—Road Traffic Acts—Goods vehicle driver's records—Failure of driver, without employer's knowledge, to keep records—Liability of employer.

Your valued opinion is sought on the following point arising under ss. 16 and 25 of the Road and Rail Traffic Act, 1933, and reg. 6 (1) of the Goods Vehicles (Keeping of Records) Regulations, 1935.

Under the above Act and regulations it is the duty of a driver of an authorized vehicle to keep a current record of work, the holder also shall cause to be kept a current record of work.

In a number of cases which appear before the court, drivers are stopped and summoned for failing to keep a record of work. Process is also taken out against the holder of the licence, in most cases a limited company, for having failed to cause to be kept a current record of work. In most cases the driver admits such offence, but in the case of the holder the defence put forward is that every precaution is taken to ensure that the drivers are fully aware of the regulations, this being done by way of notices being posted in the works and record sheets handed in every day, for checking. In the case of a driver who although being warned and being fully aware of the regulations, fails on one occasion to keep a current record whilst on a journey, and is later convicted, must the holder of the licence be convicted for having failed to cause to be kept a current record of work, even though he (the holder) knows nothing at all about the offence and can of course have no knowledge. If there must be a conviction, what further steps can a holder of a licence take to ensure that the regulations are complied with?

Answer.

The employer's liability to cause the records to be kept is absolute (see cases referred to at 102 J.P.N. 476). We cannot suggest what more the employer can do, other than to dismiss drivers who don't keep their records properly. This is, of course, not the only instance in which an employer is liable, through no fault of his own, for the acts or omissions of his employees.

11.—Road Traffic Acts—Unlighted obstruction—Work done by contractors who employ site agent and foreman—Responsibility for the failure to light.

Referring to regs. 13 and 19 of the London Traffic (Miscellaneous Provisions) Consolidation Provisional Regulations, 1934, I shall be obliged by your opinion as to the person whom you consider to commit the offence by the wording "it shall be the duty of the person by whose order, or under whose direction, such obstruction or excavation exists."

Recently in this area an excavation was found unlighted during the night due to the watchman's being indisposed. The contractors, who are a large concern, employed a site agent, and a foreman was employed on the site.

Do the words "it shall be the duty of the person by whose order or under whose direction such excavation exists" refer to the firm only, or can this be extended to include the site agent and the foreman?

MOPOL.

Answer.

We think that the contractors are the person under whose direction the excavation exists and that it is their duty to ensure that the excavation is duly lighted. It may be that evidence is available to show that the site agent and/or foreman were guilty of aiding and abetting the commission of the offence. We cannot express an opinion on that without fuller knowledge of the details of their duties and what they did or failed to do.

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